



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER

PRS: 15

**EFFECTIVE
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**ORIGINAL
ISSUED ON:
04/13/1992**

SUBJECT: ABSENCES FROM WORK

REVISION NO:

4

1.0 PURPOSE

The purpose of this policy is to provide guidelines for the accrual and administration of leave for employees, except Gov-Ex employees.

2.0 POLICY

It is the policy of the Department of Public Safety to provide its employees leave benefits in accordance with state and federal law, State Personnel Board rules and the New Mexico Administrative Code.

3.0 APPLICABILITY

This policy applies to all employees of the Department of Public Safety.

4.0 REFERENCES

- A. CALEA Chapter 22 – Compensation benefits, and conditions of work.**
- B. Family Medical Leave Act**
- C. State Personnel Board Rules 1.7.7 and 1.7.10 NMAC**

5.0 DEFINITIONS

- A. Absent Without Leave** – Failure to appear for work without authorized leave. Employees are not paid for periods of absence without leave.
- B. Child** – A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing “in loco parentis” to a child who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
- C. Chronic Condition** – For FMLA purposes, a condition that requires at least two (2) periodic visits per year for treatment by a health care provider; continues over an extended period of time; and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).
- D. Covered Servicemember** – A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability list, for a serious injury or illness, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- E. Covered Veteran** – An individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the

first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five (5) years of the veteran's active duty service, but the single twelve (12) month may extend beyond the five (5) year period.

- F. Domestic Partner** – As defined in Executive Order 2003, a person with whom the employee is in a committed, long-term unmarried relationship, exceeding twelve (12) months in duration, who are jointly responsible for the common welfare of each other and who share financial obligations. (Must complete or have completed an “Affidavit of Domestic Partnership”).
- G. Family Medical Leave Act (“FMLA”)** – Refers to the Family and Medical Leave Act of 1993, as amended, a federal law, which requires employers to provide job-protected leave to eligible employees for certain specified family and medical reasons.
- H. Health Care Provider** – A doctor of medicine or osteopathy authorized in the state to practice medicine or surgery (as appropriate) or any other person determined by the United States Secretary of Labor to be capable of providing health care services.
- I. In Loco Parentis** – Persons with day-to day responsibilities to care for and financially support a child or, in the case of an employee, a person who had responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- J. Leave Without Pay** – Time off from work for which the employee is not compensated but has been approved by the Department through applicable policy and process.
- K. Medical Emergency** – An unexpected, non-elective medical condition of an employee, requiring immediate medical attention, and requiring an absence from work for at least forty (40) work hours. The forty (40) work hour requirement may be waived by the Cabinet Secretary under exceptional circumstances.
- L. Modified Duty** – A set of temporary duties assigned to employees who are unable to perform their regular duties due to a work or non-work related injury or illness or pregnancy who have been released by their health care provider to work full or part-time with restrictions. The employee may be assigned to his or her current classification to a modified duty assignment or to a “light duty” assignment comprised of duties from a singular or variety of positions.
- M. Parent** – A biological parent or an individual who stands “in loco parentis” to an employee when the employee was a son or daughter as defined in this glossary.
- N. Relation Within the Third Degree** – Spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild and great-grandparent.
- O. Serious Health Condition** – An injury, illness, impairment, or physical or mental condition that requires inpatient care or continuing treatment or a permanent or long-term condition or condition requiring multiple treatments. Continuing treatment is a period of incapacity of more than three (3) consecutive, full calendar days involving

treatment two (2) or more times by a health care provider within thirty (30) days of the first day of incapacity unless extenuating circumstances exist, or treatment by a health care provider on at least one (1) occasion that results in a supervised regimen of continuing treatment or treatment for incapacity due to pregnancy or prenatal care. For continuing treatment the first (or only) visit must be in-person and occur within seven (7) days of the first day of incapacity. In all cases the condition must meet the definition of a serious health condition under the FMLA.

P. Serious Injury or Illness of a Current Member of the Armed Forces, including a Member of the National Guard or Reserves – An injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

Q. Serious Injury or Illness of a Covered Veteran – An injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is: (i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or (ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50% or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or (iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or (iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* § 825.127(c).

R. Spouse – A husband or wife.

S. Son or Daughter – For FMLA purposes, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing “in loco parentis” who is either under eighteen (18) years of age or is eighteen (18) years of age or older and “incapable of self-care because of a mental or physical disability” at the time FMLA leave is to commence.

T. Substantially Similar Position – For FMLA purposes, a job of similar duties, classification, status, work hours, location or comparable commute and the same salary, and entail substantially equivalent skill, effort, responsibility and authority.

6.0 PROCEDURE

A. Annual Leave

1. Annual Leave must be requested and approved in advance. Requests of five (5) or more consecutive days must be submitted with at least two (2) weeks prior notice.

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Annual leave that is not requested in advance may be denied by the supervisor on that basis alone. Requests of less than five (5) days may be submitted any time prior to usage. More restrictive notice requirements may be implemented due to legitimate operational needs, such as 24/7 operations and ensuring adequate office coverage, and must be consistently applied.

2. Annual leave will be approved subject to the legitimate operational needs of the Department. The Department may cancel previously approved leave requests only in the event of an unforeseen circumstance which requires cancellation of the leave to meet critical operational needs.
3. Annual leave may be substituted for sick leave under the same terms as sick leave if all sick leave balances have been exhausted.
4. For employees covered by a collective bargaining agreement, annual leave will be administered subject to the provisions of that agreement.
5. For purposes of service credit for the accrual of annual leave, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government will be counted in determining years of cumulative employment in the classified or NMSP service.
6. Classified employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave or suspension without pay will accrue annual leave at the following rates per pay period:
 - a. 3.08 hours per pay period if less than three (3) years of cumulative employment,
 - b. 3.69 hours per pay period if three (3) years or more but less than seven (7) years of cumulative employment,
 - c. 4.61 hours per pay period if seven (7) years or more but less than eleven (11) years of cumulative employment,
 - d. 5.54 hours per pay period if eleven (11) years or more but less than fifteen (15) years of cumulative employment; or
 - e. 6.15 hours per pay period if fifteen (15) years or more of cumulative employment.
7. NMSP employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave or suspension without pay will accrue annual leave at the following rates per pay period:
 - a. 4.62 hours per pay period if less than ten (10) years of cumulative employment,
 - b. 5.54 hours per pay period if ten (10) years or more but less than fifteen (15) years of cumulative employment,
 - c. 6.46 hours per pay period if fifteen (15) years or more but less than twenty (20) years of cumulative employment; or
 - d. 7.38 hours per pay period if twenty (20) years or more of cumulative employment.

8. Employees employed on a part-time basis and employees on furlough who work at least eight (8) hours in a pay period will accrue annual leave on a prorated basis.
9. A maximum of two hundred forty (240) hours of annual leave will be carried forward after the last pay period beginning in December. In extenuating circumstances, commissioned state police officers may request in writing from the Secretary a waiver from this rule.
10. Employees separating from service, except by a reduction in force, will be paid for accrued annual leave, as of the date of separation, up to a maximum of two hundred forty (240) hours at their current hourly rate.
11. Employees separating as the result of a reduction in force will be paid for all accrued annual leave, as of the date of separation, at their current hourly rate.
12. The estate of an employee who dies while employed will be paid for the employee's total accrued annual leave.

B. Sick Leave**1. Accrual**

- a. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 3.69 hours per pay period.
- b. Employees employed on a part-time basis and employees on furlough who work at least eight (8) hours in a pay period shall accrue sick leave on a prorated basis.
- c. There is no limit to the amount of sick leave that may be accrued.

2. Use of Sick Leave

- a. An employee may use sick leave for personal medical treatment or illness, for medical treatment or illness of a relation by blood or marriage within the third degree or of a person residing in the employee's household.
- b. Employees affected by pregnancy, childbirth, and related medical conditions will be treated the same as persons affected by other medical conditions.
- c. An employee may be allowed to use accrued sick leave to attend funeral services of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

3. Employee Notice Requirements

- a. When leave is foreseeable for childbirth, placement of a child or planned medical treatment for the employee's or family member's serious health condition, the employee must provide at least thirty (30) days advance notice or risk disapproval of the leave.

- b. When the timing of the leave is foreseeable for fewer than thirty (30) days prior to the leave, the employee must provide the notice of the need for leave within two (2) business days after knowing of the need for leave or as soon as practicable.
 - c. Sick leave for unanticipated medical conditions, injury or illness will be reported to the supervisor in accordance with the following guidelines:
 - i. Non-mission critical employees shall call the number designated by the direct supervisor at their earliest opportunity and no later than thirty (30) minutes after the scheduled beginning of their workday/shift.
 - ii. Mission critical employees shall call the supervisor on duty at least two (2) hours before the beginning of their workday/shift.
 - iii. Non-mission critical employees who work evening or night shifts shall call the number designated by the direct supervisor no later than thirty (30) minutes before the scheduled beginning of their workday/shift.
 - d. When requesting leave for a FMLA-qualifying reason for which the Department has previously provided FMLA leave, the employee must specifically request the need for FMLA leave.
4. **Certification:** Employees may be required to submit certification or a written health care provider's excuse under the following conditions:
- a. When the employee has been absent four (4) or more consecutive workdays;
 - b. When the employee or the covered family member being cared for by the employee has a serious health condition;
 - c. When there is reasonable suspicion of sick leave abuse or there is a habitually low maintenance of sick leave balance and the employee has received counseling that a health care certification may be required in the future.
5. **Fitness for Duty:** Before the employee returns to work from sick leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider, with respect to the condition for which the leave was taken, stating that the employee is able to resume work. The certification requirement must be consistent across all circumstances under which leave may be taken (sick, FMLA, etc.).
6. Sick leave is an employer provided benefit but does not imply a property right.
7. **Supervisor's responsibilities:**
- a. When an employee calls in to request sick leave, supervisors shall ask the following questions to clarify what type of leave is being requested:
 - i. What is the condition? (supervisors **may not** inquire as to the specific diagnosis, but may inquire about the general condition and/or if the condition meets the definition of a "serious health condition," and/or, if absence is to care for an eligible person listed in 6.B.2.a)
 - ii. Have you seen or are you scheduled to see a doctor?

- iii. How long will you be out?
- b. Any period of sick leave and/or annual leave that is requested under the following conditions or circumstances must be reported by the supervisor directly to the Human Resources Director (or designee) within one (1) work day of the supervisor's knowledge of the reason or potentially qualifying circumstance for the leave:
 - i. For a serious health condition;
 - ii. To care for a seriously ill family member;
 - iii. For pregnancy or bonding with a newborn/newly placed child; or
 - iv. Any period of continuous leave that is, or is projected to be, in excess of three (3) consecutive working days.
- 8. Annual and compensatory leave may be substituted for sick leave under the same terms as sick leave if all sick leave balances have been exhausted.
- 9. **Leave Abuse:** The following are instances or events that may be considered by the supervisor in determining if an employee is abusing leave. This list is not exhaustive. The supervisor should take into consideration all relevant factors and circumstances before determining or acting on leave abuse.
 - a. A pattern of calling in or requesting sick leave on certain days of the week.
 - b. A pattern of calling in or requesting sick leave prior to or following scheduled days off, holidays, weekends, and pay days.
 - c. A request for another type of leave has been denied and the employee calls in sick for the same period.
 - d. The employee continually uses sick leave as quickly as he or she has earned it.
 - e. A pattern of calling in or requesting sick leave for several days at a time.
 - f. One (1) instance of absence without leave.
 - g. Leave without pay if paid leave balances have been exhausted.
- 10. Failure to comply with the terms of 6.B "Sick Leave" may result in the denial of paid leave benefits and the timesheet coded as absence without leave.
- 11. No payment will be made for accrued sick leave at the time of separation from service except as provided by law.

C. Short Term/Long Term Disability Benefits

- 1. Employees with one (1) year of service who have contributed to the state's short term disability for the past twelve (12) months may be eligible for short term disability insurance in the event of a serious health condition that prevents the employee from working. Short term disability benefits provide up to 60% of the employee's pre-disability income while on full-time leave for a period of up to twenty-four (24) weeks, depending upon the condition.

2. Long term disability benefits may be provided under the state's long term disability plan for disabilities that are longer than twenty-four (24) weeks in duration. Benefits provided are up to 40% of the employee's pre-disability income.
3. All requests for short term or long term disability benefits must be submitted to the Human Resources Bureau for review and coordination with other benefits.
4. All short term and long term benefits are subject to the provisions of the plan as delivered and administered through the Risk Management Division of the General Services Department at the time of the disability.

D. Annual Leave/Sick Leave Donations

1. Eligibility

- a. It is the policy of the Department of Public Safety to allow Department employees that have a history of responsible leave usage to receive leave donated by DPS employees for a medical emergency where a medical emergency prevents an employee from working and the employee has exhausted all leave balances. Employees are strongly encouraged to maintain at least forty (40) hours of accrued leave in their account balances.
- b. The Department extends the request process to situations for the medical emergency of a relation by blood or marriage within the third degree, or of a person residing in the employee's household, when the employee is needed to care for the relation and is therefore prevented from working.

2. Requesting Donated Leave

- a. An employee or designee requesting donated leave must initiate a written request and supply a Certification of Health Care Provider form (or other agreed upon form) to include the nature, severity, and anticipated duration of the medical condition.
- b. The work order and IDC requesting donated leave will be submitted through the employee's chain of command. The medical certification/documentation must be submitted directly to the Human Resources Bureau via confidential mail or fax with a copy of the IDC.
- c. Final approval will be given by the Secretary.
- d. Donation of leave may be approved for a maximum of one thousand forty (1040) hours per request. A new request for annual leave donation may be submitted when the hours from the initial request are near exhaustion.
- e. Donated leave is not an employer-provided benefit accrued by the employee. The transfer of donated leave is strictly a volunteer donation from fellow Department of Public Safety employees. The Department acts as the agent in transferring the donated leave from one (1) employee to another and is not responsible for initiating such requests.
- f. Donated leave will not be approved retroactively except under exceptional circumstances.

3. Use of Donated Leave

- a. Employees may not use donated leave until first exhausting all accrued annual leave, sick leave, compensatory time, personal holiday, holiday compensatory time, holiday accrued, and administrative compensatory time. In addition, any leave accrued while on leave donation shall be exhausted on a per pay period basis.
 - b. Any unused donated leave will be reverted back to the donor in the same form of leave that was donated on a pro-rated basis. Leave will revert back when the medical emergency ends or when the receiving employee separates from the agency, whichever occurs first.
 - c. The employee becomes ineligible to use donated leave upon return to work, unless intermittent leave or a reduced work schedule is requested and approved prior to returning to work. Intermittent leave requests must have medical documentation to support the use of intermittent leave.
4. The amount of any leave donations shall not create or imply a right to leave. The Department will rescind approved donated leave upon determination of leave abuse, when leave is not judicially used for reasons not related to the medical condition, and/or when the employee has attained a balance of forty (40) hours of combined leave.
 5. The Human Resources Bureau, at every three (3) month interval, will review donations of annual leave for employees approved for intermittent absences. The review will determine the appropriateness and further need for donated leave; an updated medical certification from the medical provider may be required.
 6. Donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring. No more than one hundred twenty (120) hours of sick leave, or four hundred (400) hours upon retirement, of sick leave balances in excess of six hundred (600) may be donated by an employee. The dollar value of the transferred sick leave shall equal 50% of the monetary value of the total hours transferred by the donor employee.

E. Leave Under The Family And Medical Leave Act ("FMLA")

1. The Family and Medical Leave Act (FMLA) provides eligible employees with unpaid leave for certain family and medical reasons during a twelve (12) month period.
2. **Eligibility:** To be eligible for FMLA leave, an employee must have:
 - a. Been employed by the State of New Mexico in the classified or exempt service, legislative or judicial branch for at least twelve (12) months (which need not be consecutive) in the past seven (7) years; and
 - b. Worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately preceding the commencement of the leave.
3. **Type of Leave Provided under the FMLA:**

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- a. FMLA leave of up to twelve (12) weeks in a twelve (12) month period may be taken for any one (1), or for a combination of, the following reasons:
 - i. The birth and care of a newborn child;
 - ii. Pre-natal care, appointments and pregnancy related incapacity for a pregnant employee or the spouse of a pregnant female (in order to care for the pregnant spouse);
 - iii. The placement of a child with the employee for adoption or foster care or to care for the newly placed child;
 - iv. To care for the employee's spouse, parent, or son or daughter who is either under age eighteen (18), or age eighteen (18) or older and incapable of self-care because of a mental or physical disability or parent with a serious health condition;
 - v. The employee's own serious health condition; and/or
 - vi. **Military Exigency Leave:** A qualified exigency resulting from covered active duty or call to covered active duty status of a spouse, child or parent who is a member of the Regular Armed Forces during deployment to a foreign country, or of the National Guard and Reserve, and retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least twenty (20) years of active service, deployed to a foreign country in support of specified contingency operations, and as otherwise set forth in the FMLA.
 - b. **Military Caregiver Leave:** An eligible employee who is a covered servicemember is entitled to twenty-six (26) weeks of leave in a single twelve (12) month period to care for their spouse, child, parent, or next of kin with a serious injury or illness as defined in this policy.
4. **Military Exigency Leave:** Employees who qualify for exigency leave under 6.E.3.b "Military Caregiver Leave" above may take leave continuously, intermittently or on a reduced schedule for one (1) or more of the reasons stated below.
- a. **Short-notice deployment:** leave of up to seven (7) calendar days beginning on the day the military member is notified of an impending call or order to covered active duty may be taken to address any issue that arises because a military member is notified of a call or order to covered active duty seven (7) or fewer days prior to the date of deployment.
 - b. **Military events and related activities:** to attend any official military ceremony, program or event related to the call to covered active duty and to attend support or assistance programs and informational briefings sponsored by the military, one of its service organizations or the American Red Cross.
 - c. **Childcare and school activities:** to arrange for alternative childcare for a biological, adopted or foster child, a stepchild, or a legal ward of a military member or a child for whom a military member stands "in *loco parentis*" who is either under age eighteen (18) or age eighteen (18) or older and incapable of

self-care; to provide childcare on an urgent, immediate-need basis; to enroll in or transfer a child to a new school or day care facility; or to attend meetings with school or day care facility staff when due to circumstances arising from the active military duty.

- d. **Financial and legal arrangements:** to make or update financial or legal arrangements to address the service member's absence, such as powers of attorney; bank account signature authority; enrolling in the Defense Enrollment Eligibility Reporting System; obtaining military identification cards; or preparing or updating a will or living trust; or to act as the service member's representative before a federal, state, or local agency to obtain, arrange, or appeal military service benefits while the service member is on covered active duty and for a period of ninety (90) days following the termination of covered active duty status.
- e. **Counseling:** to attend counseling (provided by someone other than a health care provider) for the employee, the covered service member, or his or her child, if the need for counseling is due to the covered active duty.
- f. **Rest and recuperation:** to spend time with a covered service member who is on short-term, temporary rest and recuperation leave during the period of deployment. A maximum of fifteen (15) calendar days is allowed for rest and recuperation purposes.
- g. **Post-deployment activities:** to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for ninety (90) days following the termination of the covered active duty; and to address issues that arise from the death of a covered service member while on covered active duty, such as meeting and recovering the body and making funeral arrangements.
- h. **Additional activities:** to address other events that arise out of the covered active duty or call to covered active duty if the Department and employee agree that the leave qualifies as an exigency and agree to the timing and duration of the leave. Such activities must be pre-approved in writing by the Secretary.
- i. **Parental care:** to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting, or transferring the parent to a care facility, or attending meetings with staff at a care facility.

5. Leave Period Calculation / Limitations on FMLA Leave

- a. The twelve (12) month period for 6.E.3.a above is the twelve (12) month period measured forward from the date an employee's first FMLA leave begins. Subsequent twelve (12) month periods begin the first time FMLA leave is taken after the completion of any previous twelve (12) month period.
- b. The single twelve (12) month period for 6.E.3.b "Military Caregiver Leave" above begins from the date leave under this provision begins and ends upon the completion of a twelve (12) month period. This period is calculated separately from any other FMLA leave period measured under 6.E.5.a above.

- c. Leave to care for a newborn or for a newly placed child must conclude within twelve (12) months after the birth or placement of the child.
- d. FMLA leave ends upon the death of the employee's critically ill or injured parent, spouse, or child, except for the provisions set forth in 6.E.4.g above.
- e. When both spouses are employed by the agency, they are together entitled to a combined total of twelve (12) weeks of FMLA leave for the birth or placement of a child or to care for a family member with a serious health condition as provided under FMLA, or to a total of twenty-six (26) weeks of FMLA leave provided under 6.E.3.b "Military Caregiver Leave."

6. Intermittent or Reduced Work Schedule Leave

- a. Intermittent leave is defined as multiple blocks of leave spread over a period of time as opposed to one (1) discrete block of leave punctuated by beginning and ending dates. A reduced work schedule is a leave schedule that reduces an employee's usual number of hours per workweek, hours per workday, or days per workweek.
- b. Leave may be taken on an intermittent or on a reduced work schedule for a serious health condition where medically necessary or for a qualifying exigency.
- c. Leave to care for a newborn or for a newly placed child may not be taken intermittently or on a reduced work schedule unless pre-approved by the Secretary.
- d. If an employee takes leave intermittently or on a reduced work schedule basis, the employee must attempt to schedule the leave so as not to unduly disrupt the Department's operations.

7. Employee Notice Requirements

a. Medical FMLA Leave

- i. When leave is foreseeable (e.g. for childbirth, placement of a child, planned medical treatment) the employee must provide at least thirty (30) days advance notice or risk disapproval of the leave.
- ii. When the timing of the leave is foreseeable for fewer than thirty (30) days prior to the leave, the employee must provide the notice of the need for leave within two (2) business days after knowing of the need for leave or as soon as practicable.
- iii. Leave for unanticipated medical FMLA qualifying reasons will be reported to the supervisor in accordance with 6.B "Sick Leave."

- b. **Military Exigency Leave:** An employee must give notice of the need for exigency leave as soon as practicable, depending on the facts and circumstances, regardless of how far in advance such leave is foreseeable.

8. Requests for FMLA Leave

- a. An employee should request FMLA leave by completing a Request for Leave form and submitting it to their direct supervisor.
- b. FMLA requests, and any accompanying certifications, must be submitted to the Human Resources Bureau immediately upon receipt. Medical certifications must be handled and submitted in accordance with 6.E.10 "Required Certifications" below.
- c. Requests for FMLA leave may be submitted without the certification; however, certifications will be required within fifteen (15) calendar days of the provision of the FMLA eligibility notice.
- d. Verbal or electronic notice is sufficient to inform the supervisor that the employee will need the FMLA leave. If the employee has not submitted a request for FMLA leave, the supervisor must immediately contact HRB to provide the facts surrounding the request.
- e. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly mention the FMLA.
- f. When requesting leave for a FMLA-qualifying reason for which the Department has previously provided FMLA leave, the employee must specifically request the need for FMLA leave.
- g. Supervisors will be responsible for keeping the chain of command informed of such requests without violating confidentiality of medical information.

9. Designation of Leave as FMLA Leave

- a. When the Department receives a request for FMLA leave or identifies leave as potentially qualifying for FMLA the Department will provide the employee with information regarding their eligibility, rights, and responsibilities under FMLA.
- b. When the Human Resources Bureau receives information that the employee is absent for work for reasons that would qualify for FMLA, the Human Resources Bureau may designate the leave as FMLA based upon the information known about the reasons for the leave.
- c. If the employee has not verbally designated qualifying exigency FMLA leave as such, the supervisor may designate the leave as exigency leave based upon the known circumstances for the leave and must immediately notify the HRB of the request and approval.
- d. The designation of leave as qualifying for FMLA may be given on a provisional basis pending receipt of the appropriate or complete certification and/or documentation.
- e. The designation of FMLA qualifying leave may be made retroactively so long as the employee's rights for FMLA leave are preserved.
- f. If the employee has not notified the Department of the reason for the leave, and the employee desires that leave be counted as FMLA leave, the employee must notify their supervisor within two (2) business days of the employee's return to

work that the leave was for a FMLA reason, and if not previously provided, produce appropriate and/or required documentation in a timely manner.

10. Required Certifications

a. Medical Leave

- i. Employees are required to submit medical certification on the Certification of Health Care Provider form or, for Military Caregiver Leave, on the Certification for Serious Injury or Illness of Covered Service member, from a health care provider to support a request for FMLA leave for the employee's, or a family member's, serious health condition. Such certification must be complete and sufficient, providing all requested information.
- ii. FMLA medical certifications must be sent directly to the Human Resources Bureau in a sealed envelope marked "confidential" or faxed or scanned by the employee directly to the Human Resources Bureau – do not send the Request for Leave and medical certification "up through the chain" of supervision.
- iii. During medical FMLA leave (except Military Caregiver Leave), the Department may request that the employee provide recertification of a serious health condition as provided for under the FMLA.
- iv. Before the employee returns to work from FMLA leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider, with respect to the condition for which the leave was taken, stating that the employee is able to resume work and can perform the essential functions of the job. The employee will be notified upon designation of FMLA qualifying leave whether a fitness for duty certification will be required.

b. Exigency Leave

- i. The first time an employee requests leave for a qualifying exigency FMLA leave because of covered active duty or a call or order to active duty of a military member, the request will require either certification of the service members' active duty orders or certification obtained from a health care provider not affiliated with the military as defined in 5.0.H.
 - ii. For exigency FMLA leave the Department may require that the employee sign a Certification of Qualifying Exigency Form that provides a description of the facts regarding the exigency that are sufficient to support the need for the leave.
- c. **Time limit to produce certification:** The minimum amount of time to be allowed an employee to produce a certification is fifteen (15) calendar days. If the employee deliberately fails to provide the requested information, the leave may not be job-protected under the FMLA.
- d. **Incomplete certification:** If the certification is incomplete or insufficient, the Human Resource Manager (or designee) will:

- i. Provide the employee with written notice of what specific information is still needed and give the employee seven (7) calendar days to cure the deficiencies; or
 - ii. Contact the employee's health care provider to clarify or authenticate the certification (in which case the employee may be asked to provide a release of medical (HIPAA) form for consent);
 - iii. For exigency certification, contact an appropriate Department of Defense unit to verify the military member is on covered active duty or call to covered active duty status or verify the meeting or appointment schedule; and/or
 - iv. If the validity of the initial medical certification is doubted, require the employee to obtain a second opinion by an independent provider at the Department's expense. If the initial and second certifications differ, the Department may, at its expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider. Second opinions will not be requested in the case of Military Caregiver Leave.
- e. While on FMLA leave, the employee may be required to provide periodic reports regarding the employee's status and intent to return to work. If the employee's anticipated return to work date changes and it becomes necessary for the employee to take more or less leave than originally anticipated, the employee must provide reasonable notice (i.e., within two (2) business days) of the employee's changed circumstances and new return to work date.
 - f. If the employee gives notice of the employee's intent not to return to work, the employee will be considered to have voluntarily resigned.
 - g. The Department may require the employee to provide documentation or statement of family relationship (e.g., birth certificate or court document) when requesting FMLA leave.
 - h. FMLA leave or return to work may be delayed or denied if the complete and appropriate documentation is not provided in a timely manner. Also, a failure to timely provide requested documentation of the reason for an absence from work is cause to code the employee's leave as AWOL and lead to termination of employment.
11. **Use of Paid Leave, Disability Benefits, Workers' Compensation Indemnity Benefits, and Unpaid Leave During FMLA**
- a. FMLA provides eligible employees with up to twelve (12) (twenty-six (26) weeks for care of injured military service member) weeks of unpaid leave. If an employee has accrued paid leave (i.e., vacation, sick leave, personal leave, compensatory leave, donated sick or annual leave, or holiday paid leave or holiday accrued leave subject to the limitations below), the employee must use any available qualifying paid leave concurrently as FMLA leave up to the extent that any disability or workers' compensation benefits are not replacing paid leave time. If an employee does not have sufficient paid leave balances to receive the equivalent of regularly scheduled pay, the Human Resources Bureau will assist

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the employee in scheduling the substitution of paid leave to maximize payment of benefit premiums during the leave period.

- b. The substitution of paid leave will be subject to the terms and conditions of such leave usage outlined in 6.B "Sick Leave" for FMLA medical leave. The substitution of disability benefits and workers' compensation indemnity benefits will be subject to the terms and conditions of these benefit plans. Employees choosing not to meet these conditions remain otherwise entitled to unpaid FMLA leave.
- c. Employees on military exigency leave will use paid annual, compensatory, personal day, and/or holiday paid leave unless the reason for the exigency leave qualifies for the use of sick leave under 6.B.
- d. The substitution of paid leave and/or workers' compensation indemnity or disability payments for unpaid leave does not extend the leave period.
- e. Paid holiday leave and holiday leave accrued taken that occurs while an employee is out on FMLA shall not count towards the week entitlement for FMLA unless the employee is out on FMLA leave for the full normal workweek.

12. Maintenance of Health Benefits

- a. During FMLA leave an employee is entitled to continued group health plan coverage under the same conditions as if the employee had continued to work.
- b. To the extent that an employee's FMLA leave is paid leave by use of vacation, sick leave, etc., the employee's portion of health insurance premiums will be deducted from the employee's salary.
- c. If the employee does not return to work and terminates employment, any amounts due the State for health insurance will be deducted from any final pay due the employee (such as from pay-outs of annual leave) as permissible; otherwise, the terminated employee may pay the portion via certified check.

13. Return from FMLA Leave

- a. Upon return from FMLA leave, the Department will place the employee in the same position the employee held before the leave or an equivalent position with equivalent pay, benefits, and other employment terms.
- b. An employee is entitled to reinstatement only if he or she would have continued to be employed had FMLA leave not been taken. Thus, an employee is not entitled to reinstatement if, because of a layoff, reduction in force or other reason, the employee would not be employed at the time job restoration is sought.
- c. An employee released to return to work before the approved ending date of the family medical leave will be required to give the supervisor a minimum of two (2) working days advance notification before the planned return.

- 14. **Failure To Return To Work Following FMLA Leave** – If the employee does not return to work following the conclusion of FMLA leave, the employee will be considered to have voluntarily resigned.

15. Confidentiality and Administrative Issues

- a. All certifications and FMLA requests must be sent directly to the Human Resources Bureau to maintain confidentiality and ensure compliance with law.
- b. All medical records, medical certifications, and correspondence relating to employees and/or families are considered “confidential” and are to be kept only by the Human Resources Bureau in a separate file and are to be kept in a locked file cabinet or secured file room.
- c. Required re-certifications and return to work certifications must be submitted directly to the Human Resources Bureau to preserve confidentiality and ensure compliance with law.

16. Coordination of FMLA with Workers’ Compensation and the ADA

- a. Where eligible and relevant, FMLA contains some job reinstatement guarantees that are not necessarily contained within Workers’ Compensation benefits. Therefore, where an eligible employee misses time from work due to a work-related injury that is also considered a serious health condition as defined by the FMLA, the employee may avail him/herself of the FMLA guarantees by requesting FMLA designation of any time missed from work. Should the employee fail to do so, the Department may designate time missed as FMLA time and, if so, will notify the employee.
- b. An employee on FMLA with a work-related serious medical condition who is released to return to work with medical restrictions may refuse an offer of light duty and remain on FMLA leave until fully released or all FMLA eligibility exhausts, whichever occurs first. However, refusal of a light duty assignment may result in a discontinuance of benefits under Workers’ Compensation.
- c. The ADA requires that employers reasonably accommodate employees who have qualifying disabilities. On occasion, an employee will return from FMLA or Workers’ Compensation leave with a residual disability and will request an additional leave accommodation, such as reduced work hours or work days, for a specific period of time.
 - i. If the FMLA allowance has not been exhausted, a qualifying request for reduced work hours/days will be granted as FMLA leave until the allowance has been completely used as part of the job reinstatement guarantee inherent in FMLA.
 - ii. Additional non-FMLA leave may be granted as an ADA accommodation if deemed a reasonable accommodation that does not cause undue hardship to the Department.
 - iii. Supervisors should follow processes as guided by the DPS ADA Coordinator, to determine if the requested accommodation is reasonable.

- 17. **Retaliation** - Supervisors are advised that retaliation against an employee who has, or plans to use, FMLA is prohibited. If, as a result of using the FMLA benefit, an employee feels he or she is the subject of any adverse employment action, he or

she should contact the Human Resources Bureau immediately. For further information or clarification about FMLA leave, please contact your assigned HR Representative at the Human Resources Bureau.

F. Modified/Limited Duty Assignment - Employees who are unable to perform their regular duties because of an illness or injury that are released by their health care provider to work full or part time with restrictions may be afforded modified or light duty return to work opportunities whenever possible. Refer to *PRS: 19 Modified/Limited Duty* for further details.

G. Leave Without Pay (Non-Medical)

1. The Department may approve leave without pay in situations where the employee is required to or requests to be absent from work and the employee has met all the requirements as outlined in this policy. The Department may grant leave without pay for a lesser period than requested. Leave without pay may be granted only if workplace efficiency can be maintained and the Department can guarantee a position of like status, pay and geographic location upon return, or the employee agrees in writing to waive that requirement.
2. Requests for leave without pay exceeding thirty (30) days require approval by the Secretary or designee.
3. Requests for leave without pay not exceeding thirty (30) days require approval by the Division Director or Deputy Secretary or their designees.
4. The duration of leave without pay shall be in accordance with State Personnel Board Rules for classified employees.
5. The Department requires the reason and any related documentation for an employee to take leave without pay. Required proof is as follows:
 - a. Education and training: Documentation of completed and approved DPS Request for Training Form or Request for Long-term Educational Opportunities Form.
 - b. Military service: copies of military orders to report for duty.
6. The following guidelines are used in the processing of a leave without pay request.
 - a. Employees give notice of their intention to apply for leave without pay no later than ten (10) workdays before the requested start date of the leave, unless there is an unforeseeable circumstance. The notice provides the specific reason(s) for the request, required documentation, and the expected duration of the absence.
 - b. Employees submit requests for leave without pay in writing to the supervisor for review and recommendations for approval. Requests for leave without pay exceeding thirty (30) days, and supervisor recommendations, shall be forwarded to the Cabinet Secretary or designee for consideration. If denied, the supervisor documents the business necessity reason(s).
 - c. An employee who fails to report to work upon expiration of approved leave without pay is considered absent without leave and subject to disciplinary action.

- d. The Department guarantees a position of like status (permanent, term, or temporary) and pay (not necessarily the same Pay Band), at the same geographic location (not necessarily the same office or position from which the employee left) on the return from leave without pay of an employee who has complied with all the provisions of this policy.

H. Administrative Leave

1. The Department may grant administrative leave, which is paid leave, in accordance with State Personnel Board Rule 1.7.7.14 NMAC, DPS policies, Governor's directives, and in accordance with the following guidelines.
2. The Secretary or designee may grant employees administrative leave for up to five (5) consecutive days as follows:
 - a. When it is in the best interest of the Department;
 - b. For recognition of exemplary performance or achievements;
 - c. Employees shall be entitled to administrative leave when appearing in obedience to a subpoena as a witness before a grand jury or court or federal or state agency. In such cases, if the employee is on a swing or graveyard shift, they will be temporarily placed on a day shift.
 - d. Employees shall be entitled to administrative leave/jury duty for serving on a jury. In such cases, if the employee is on a swing or graveyard shift, they will be temporarily placed on a day shift, unless precluded by legitimate business or operational needs.
 - e. The Secretary may grant administrative leave for employees who pose a threat to themselves, other employees, or clients in order to minimize the risk of injury. All such threats will be reported immediately to the Division Director and the Human Resources Bureau.
3. The Secretary or designee may also grant administrative leave for a period up to one hundred sixty (160) consecutive work hours during a disciplinary action proceeding or investigation that requires the removal of a classified employee from the workplace.

I. Inclement weather – work delays/office closures

1. The quality and consistency of services provided by the Department shall continue in mission-critical operations. Therefore this section does not apply to employees that work in positions designated as mission-critical.
2. During inclement weather, all DPS employees have the responsibility to report to work on time or as close as possible to their normal work schedule. The work accomplished by employees and the services provided shall continue within the Department.
3. When inclement weather results in unsafe driving conditions, a delay, early release, or office closure may be announced. This decision shall be based on the road and

safety conditions at the time, as well as snow removal and sanding of the roadways and highways.

4. Announcement of office openings and/or delays shall be made via local television and radio media. Employees may tune in for these announcements and shall not telephone the Governor's office, the State Personnel Office or the Office of the Secretary. Employees may call their Division Director's office for information. Early release or office closures during the day will be communicated by State Personnel Office to the Office of the Secretary and Human Resource Bureau, then to each division and to employees by e-mail. When an official announcement has been made regarding a delay, an early release or office closure, employees shall be placed on administrative leave for the office location(s) affected by the inclement weather.
5. Employees who are on approved leave or who call in sick are not entitled to the administrative leave granted for the inclement weather.
6. Employees who would not normally report to work during the period of the delay, early release, or closure are not entitled to the administrative leave granted for the inclement weather.
7. Employees who are on travel in areas of the state not covered under the announced delay, early release, or closure are not entitled to the administrative leave granted for the inclement weather.
8. Employees who have already reported for work at the time of the announcement of a delay may not accrue administrative leave for use at a later time.
9. Individual employees who are unable to report to work due to inclement weather and/or road conditions affecting their commute may request annual leave if there is no official announcement of a delay, early release, or closure.
10. The Division Director or designee may grant administrative leave when an office is open yet the area is experiencing adverse or severe weather conditions and/or road closures.
11. If the request for administrative leave is denied, the employee may request annual or compensatory leave and in the absence of sufficient annual leave, the employee may request leave without pay.
12. Employees are required to call the immediate supervisor in accordance with the timeframes established in the sick leave section of this policy and failure to do so will result in absence without leave (AWOL).
13. The designee who authorized administrative leave due to inclement weather shall inform the Division Director, Cabinet Secretary, and the Human Resources Director.

J. Military Leave

1. Employees who are members of an organized reserve unit or the National Guard ordered to active duty training shall be granted up to fifteen (15) workdays of paid military leave per federal fiscal year. These fifteen (15) work days are in addition to other authorized leave. The Governor may grant members of the National Guard

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paid military leave for active duty training in addition to that already given by law. Such additional leave must not exceed fifteen (15) workdays per federal fiscal year.

2. Full-time employees who are members of the State Defense Force shall be granted up to fifteen (15) workdays of paid military leave to attend officially authorized training or instruction courses per federal fiscal year.
3. Employees who are members of the Civil Air Patrol shall be granted military leave not to exceed fifteen (15) workdays per calendar year for search and rescue missions.
4. Employees who are members of a reserve component of the United States Armed Forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States Armed Forces in accordance with the provisions of 38 U.S.C. Section 2024.
5. Employees in temporary or emergency status are not entitled to paid military leave.
6. A qualifying employee shall be granted, upon giving notice to his or her immediate supervisor, a leave of absence to serve in the uniformed service, as defined in section [5903.01](#) of the Revised Code. This leave shall be considered as a leave of absence from service with reinstatement rights.
7. An employee may choose to substitute accrued annual leave for unpaid military leave.
8. No single leave of absence or combination of uniformed service leaves of absence may exceed five (5) years or a single, longer period required to complete an initial period of obligated service.
9. Employees on uniformed service leave without pay will be given the option of making direct payments of the employer and employee's share of the health/medical insurance premiums.
10. Application for reinstatement. An employee returning from uniformed service leave without pay must apply for reinstatement within the period set forth below:
 - a. Leave of less than thirty (30) days: immediately upon release from uniformed service, but appointing authorities must allow for travel time and eight (8) hours of rest;
 - b. Leave of thirty-one (31) to one hundred eighty (180) days: within fourteen (14) days of completing uniformed service requirement; or
 - c. Leave of more than one hundred eighty (180) days: within ninety (90) days of completing uniformed service requirement.
 - d. If the leave of absence was for more than ninety (90) days, the agency may require, with the application, evidence showing that the application is timely, that the duration of all such leaves of absence does not exceed five (5) years or the time to complete the initial period of obligated service, and the employee's entitlement to reemployment has not terminated according to the circumstances described in 38 U.S.C.A. 4304, effective October 13, 1994.

11. Upon return from a period of duty in the uniformed service lasting ninety (90) calendar days or less, the employee shall be returned to the same or similar position within the employee's former classification. If the period of duty lasts more than ninety (90) days, the employee may be placed in any position of equivalent status, seniority, and pay.
12. Benefits upon reinstatement - A reinstated employee shall receive all rights and benefits generally available to employees in a comparable leave of absence without pay, including the following:
 - a. The employee will continue to accrue sick and annual leave for all periods of paid military leave;
 - b. All seniority which would have accrued had the employee been on the job.
 - c. Automatic salary adjustments associated with the position and due the employee had the employee been on the job;
 - d. Any change in classification or pay range, which would be due the employee had the employee been on the job; and
 - e. Reinstated health insurance and related insurance benefits with no waiting periods or pre-existing condition exclusions.

K. Voting Leave

1. Employees who are registered voters may absent themselves from work for two (2) hours for the purpose of voting between the time of the opening and the time of the closing of the polls.
2. This leave is not available to employees whose work day begins more than two (2) hours subsequent to the time of opening the polls or ends more than three (3) hours prior to the time of closing the polls.
3. Supervisors may specify the time the employee is absent to provide sufficient office coverage and work priorities.
4. The Department may verify with the County Clerk's Office that the employee voted.

L. Additional Leave

1. Personal Day – Employees who have one (1) year of continuous service with the New Mexico State Police or the classified service are entitled to one (1) personal leave day each calendar year.
 - a. The personal leave day must be taken in consecutive hours.
 - b. The personal leave day must be taken by December 31st or it will be lost. (*PRCNT* in SHARE system).
 - c. Employees who do not take the personal leave day shall not be paid for it upon separation from the NMSP or Classified services.

2. Holiday Accrued (Bonus Day) – An accrued holiday (also known as a “bonus day”) is earned when an employee’s regular day off falls on the day of an authorized holiday (*HOLIDAYACC* in SHARE system).
 - a. Because a bonus day is intended to provide an employee with a “holiday” in the season it is accrued, it is preferred that accrued bonus day(s) be taken no later than thirty (30) days after the time it is posted in SHARE.
 - b. A bonus day must be utilized during the fiscal year it is earned (July 1st to June 30th).
3. Compensatory Time – Employees may accrue up to a maximum of forty (40) hours, unless a higher or lower maximum is stipulated via a program directive.
 - a. Compensatory time includes;
 - i. Premium overtime banked - (Comp Time – *PREMBANKOT*);
 - ii. Straight overtime banked - (Comp Time – *COMPTIME*) and
 - iii. Holiday compensatory time for hours worked on a holiday - (Comp Time - *HOLIDAYCMP*).
 - b. Compensatory hours earned, banked, and not paid out during the same pay period in excess of forty (40) hours will be taken as time off within thirty (30) days of the end of the pay period in which they are earned unless otherwise approved by management.
 - c. If balances are in excess of forty (40) hours in total, then the employee will use compensatory time in lieu of annual or sick leave.

M. Job Abandonment

Employees who fail to report to work and have not contacted their supervisor to request leave will be placed on absence without leave. Three (3) consecutive workdays in this status will be considered job abandonment and the employee will be dismissed.

N. Impact of Leave on Probationary Period

1. Classified Employees: Any full-time continuous leave, except for active service military leave, taken during the probationary period exceeding thirty (30) calendar days shall extend the probationary period by the number of days of leave that exceeds thirty (30) calendar days.
2. NMSP employees: Any full-time continuous leave taken during the probationary period exceeding thirty (30) calendar days shall extend the probationary period by the number of days of leave that exceeds thirty (30) calendar days.

O. Confidentiality Issues Associated with Medical Information and Leave

1. Medical information is strictly confidential; supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations.

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2. All medical certifications, re-certifications, and medical information must be sent directly to the Human Resources Bureau via fax or in an envelop marked "confidential" and are to be kept only by the Human Resources Bureau in a separate file and are to be kept in a locked file cabinet or secured file room.
3. Medical information on leave requests shall not be kept outside of the Human Resources Bureau.
4. Supervisors will be responsible for keeping the chain of command informed of leave requests without violating confidentiality of an employee's medical information.
5. All employees are expected to maintain the confidentiality of medical information.

7.0 ATTACHMENTS

NONE (*Any forms required are located on the INSIDER under the Human Resources Bureau*)

8.0 APPROVAL

APPROVED BY: s/Gorden E. Eden Jr. **DATE:** October 28, 2013
DPS Cabinet Secretary